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Attorney for Plaintiff
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIK G. WILKE,

Plaintiff,

vs.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant.

Case No. 8:17-cv-00984

COMPLAINT FOR DECLARATORY
RELIEF, PLAN BENEFITS AND
ENFORCEMENT OF RIGHTS
UNDER EMPLOYEE RETIREMENT
INCOME SECURITY ACT

[29 U.S.C. § 1132(a)(1)(B)]

Plaintiff ERIK G. WILKE complains against defendant THE
PRUDENTIAL INSURANCE COMPANY OF AMERICA as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiff ERIK G. WILKE (hereinafter “WILKE” or “plaintiff”) is an individual. At all relevant times, plaintiff was, and now is, a resident of the County of Orange.

1 2. Defendant THE PRUDENTIAL INSURANCE COMPANY OF
2 AMERICA (hereinafter “PRUDENTIAL” or “defendant”) was at all relevant
3 times, and now is, a corporation organized and existing pursuant to the laws of
4 New Jersey, with a principal place of business in Newark, New Jersey.

5 3. On or about January 1, 2011, PRUDENTIAL issued a group contract
6 of long-term disability income insurance, Policy No. DG-17900-DE, to Automatic
7 Data Processing, Inc. (“ADP”) or a related or affiliated entity. ADP used Policy
8 No. DG-17900-DE to fund an “employee welfare benefit plan” (“the ADP LTD
9 Plan”) within the meaning of the Employee Retirement Income Security Act of
10 1974 (“ERISA”), 29 U.S.C. § 1002(1).

11 4. At all relevant times, WILKE was insured under Policy No.
12 DG-17900-DE and was a “participant” in and/or “beneficiary” of the ADP LTD
13 Plan within the meaning of ERISA, 29 U.S.C. § 1002(7) and 29 U.S.C. § 1002(8),
14 respectively.

15 5. This Court has jurisdiction of this matter pursuant to ERISA, 29
16 U.S.C. § 1132(e)(1). Venue in this judicial district is proper under 29 U.S.C.
17 § 1132(e)(2) in that the breach of the subject ERISA plan occurred here, and
18 defendant may be found here.

19
20
21 FIRST CLAIM FOR RELIEF

22 (Declaratory Relief under 29 U.S.C. § 1132(a)(1)(B))

23 6. Plaintiff incorporates herein by this reference as though fully set forth
24 the allegations of Paragraphs 1 through 5, above.

25 7. In May 2013, WILKE became totally disabled and unable to work in
26 his occupation. Plaintiff submitted a claim for long-term disability benefits (“LTD
27 benefits”) to PRUDENTIAL in its capacity as claims administrator and fiduciary
28 for the ADP LTD Plan. Following expiration of the applicable waiting period,

1 PRUDENTIAL paid LTD benefits to WILKE from November 11, 2013 through
2 November 10, 2015, but thereafter terminated plaintiff's benefits based on
3 defendant's conclusion that WILKE no longer met the requirements for continued
4 LTD benefits. PRUDENTIAL informed WILKE of its decision under cover of
5 November 24, 2015

6 8. Following the termination of his LTD benefits, plaintiff submitted the
7 mandatory administrative appeal to defendant. The administrative appeal submitted
8 by WILKE was rejected by PRUDENTIAL on March 20, 2016, thereby satisfying
9 any requirement for the exhaustion of administrative remedies. A second,
10 voluntary appeal by WILKE was rejected by PRUDENTIAL on April 18, 2017.

11 9. While WILKE's second administrative appeal was pending, defendant
12 arranged for an "independent medical examination" ("IME") of plaintiff, using a
13 physician retained and compensated by PRUDENTIAL. The IME physician
14 concluded that WILKE was incapable of sitting for more than 10 minutes at a time,
15 for more than 20 minutes in an hour, or for more than 2.5 hours in a work day. The
16 IME physician also concluded that plaintiff was capable of "occasionally" lifting
17 up to 10 pounds ("occasionally" meaning one-third or less of the time).

18 10. PRUDENTIAL accepted the IME physician's findings as set forth
19 above, but nonetheless took the position that WILKE was capable of performing
20 any of four different occupations identified in the Dictionary of Occupational
21 Titles ("DOT"). Three of these occupations were classified by the DOT as
22 "sedentary," while the fourth was classified as "light." In taking this position,
23 defendant claimed that the three sedentary occupations could accommodate
24 plaintiff's sitting restrictions with a "sit-stand" option, which of course was
25 nonsense because the DOT doesn't set forth any such option and because
26 defendant's position in any event was contrary to controlling Ninth Circuit
27 authority. See Armani v. Northwestern Mutual Life Ins. Co., 840 F.3d 1159 (9th
28 Cir. 2016). PRUDENTIAL's conclusion as to the fourth occupation was equally

1 untenable, as the DOT sets forth physical requirements for that occupation in
2 excess of what the IME physician concluded was possible for WILKE.

3 11. A controversy has arisen and now exists between plaintiff and
4 defendant regarding plaintiff's entitlement to LTD benefits subsequent to
5 November 10, 2015. Plaintiff contends that he continues to be totally disabled
6 within the meaning of the ADP LTD Plan and Policy No. DG-17900-DE, and that
7 he is entitled to ongoing LTD benefits (and almost certainly will be until the end of
8 the ADP LTD Plan's maximum benefit period) as the result of his continuing
9 disability and other factors properly to be taken into account. Defendant apparently
10 contends that its termination of plaintiff's LTD benefits was proper. A judicial
11 declaration of the parties' respective rights, obligations and liabilities therefore is
12 necessary and appropriate at this time.

13
14 12. As a result of the dispute and disagreement explained above, it has
15 become necessary for WILKE to retain an attorney to enforce his rights under
16 ERISA. Plaintiff therefore is entitled to an award of reasonable attorney fees and
17 costs under ERISA, 29 U.S.C. § 1132(g)(1).

18
19 SECOND CLAIM FOR RELIEF

20 (Plan Benefits and Enforcement of Rights under 29 U.S.C. § 1132(a)(1)(B))

21 13. Plaintiff incorporates herein by this reference as though fully set forth
22 the allegations of Paragraphs 1 through 10, above.

23 14. As a result of PRUDENTIAL's wrongful actions as set forth above,
24 WILKE has been damaged in an amount to be shown according to proof, and
25 accordingly is entitled to continued LTD benefits under the ADP LTD Plan and
26 Policy No. DG-17900-DE, and an enforcement of his rights, in that amount.

27 15. As a result of the dispute and disagreement explained above, it has
28 become necessary for WILKE to retain an attorney to enforce his rights under

1 ERISA. Plaintiff therefore is entitled to an award of reasonable attorney fees and
2 costs under ERISA, 29 U.S.C. § 1132(g)(1).
3

4 WHEREFORE, plaintiff ERIK G. WILKE prays for judgment against
5 defendant THE PRUDENTIAL INSURANCE COMPANY OF AMERICA as
6 follows:
7

8 1. For a judicial declaration of the parties' respective rights, obligations
9 and liabilities, relative to the matters referred to in Paragraph 11, above;

10 2. For plan benefits now due and owing, and an enforcement of
11 plaintiff's rights in that regard, relative to the matters referred to in Paragraphs 11
12 and 14, above;

13 3. For employee benefits ancillary to the LTD benefits at issue, if any;

14 4. For reasonable attorney fees and costs of suit; and

15 5. For such other and further relief as the Court deems just and proper.
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17 Dated: June 8, 2017

LAW OFFICE OF ROBERT F. KEEHN

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19 By: _____/s/_____
20 Robert F. Keehn, Esq.
21 Attorney for Plaintiff
22 Erik G. Wilke
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